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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re S.V., a Person Coming  
Under the Juvenile Court Law.

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LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

T.V.,

Defendant and Appellant;

S.V., a Minor,

Appellant.

B294974

Los Angeles County  
Super. Ct. No. DK19866

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APPEAL from orders of the Superior Court of Los Angeles  
County. Danette J. Gomez, Judge. Affirmed.

Cristina Gabrielidis, under appointment by the Court  
of Appeal, for Defendant and Appellant.

Neale B. Gold, under appointment by the Court of Appeal,  
for Minor and Appellant.

Mary C. Wickham, County Counsel, Kristine Miles,  
Assistant County Counsel, and Kimberly Roura, Deputy County  
Counsel, for Plaintiff and Respondent.

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## INTRODUCTION

Mother's son S.V. tested positive for methamphetamine at birth. He immediately was placed in the care of a foster family and became a dependent of the juvenile court. Mother struggled with methamphetamine addiction and depression during the first six months of S.V.'s dependency. The court terminated her reunification services and set a hearing to determine S.V.'s permanent plan under section 366.26 of the Welfare and Institutions Code<sup>1</sup> (.26 hearing). S.V.'s foster parents agreed to adopt him. At that point, mother had a wake-up call and changed her ways—she successfully completed an inpatient drug program, sought treatment for her mental health issues, and had positive visits with her son. She filed a petition under section 388 to modify the court's order to regain custody of her son or, alternatively, reinstate reunification services.

The court held a year-long evidentiary hearing on the issue. By the time it concluded, S.V. was two years old. The juvenile court found mother had changed her circumstances, but concluded the return of S.V. to mother or reinstatement of reunification services was not in the child's best interests. It

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

denied her section 388 petition and terminated her parental rights, finding no exception to adoption applied. Both mother and minor's counsel appeal from the juvenile court's orders.

This is a difficult case. We acknowledge minor's counsel supports S.V.'s reunification with mother. We also sympathize with mother and commend her for overcoming her addiction. We nevertheless conclude the court did not abuse its discretion when it denied mother's section 388 petition and find substantial evidence supports its order terminating her parental rights under section 366.26. We thus affirm the juvenile court's orders.

### **FACTS AND PROCEDURAL BACKGROUND**

#### **1. *The Department's involvement and jurisdictional findings***

Mother gave birth to S.V. in early October 2016.<sup>2</sup> They both tested positive for amphetamine. Mother admitted to using methamphetamine (meth) during her pregnancy. S.V.'s father's identity and whereabouts are unknown.

Mother immigrated to the United States from Yugoslavia in 2005; her father had immigrated in 1989. Mother's parents died in 2012 and 2013. Mother has no relatives here. She began using meth in December 2013. She has a medical history of panic attacks, anxiety, depression, and some seizures. Smoking meth helped her panic attacks. She also was convicted of misdemeanor driving under the influence (DUI) in 2006 and 2012. Mother does not have a car.

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<sup>2</sup> Mother, who was 38 at the time, did not believe she could have children due to a medical condition.

At the time of S.V.'s birth, mother had been working as a live-in caretaker for an elderly couple, the M.'s. Their adult granddaughter also lives with them.

S.V. was removed from mother the day after his birth and placed with a foster family a few days later. The Los Angeles County Department of Children and Family Services (the Department) then filed a petition under section 300, subdivision (b)(1). As amended, the petition alleged S.V. was at risk of harm due to his positive toxicology screen for amphetamine, mother's history of and periodic drug use, and mother's "mental and emotional problems including anxiety, depression and panic attacks." At the detention hearing the juvenile court ordered monitored visits for a minimum of three hours per week. Mother regularly visited S.V. in October 2016.

Mother did not contest the petition and waived her rights to a trial. On November 15, 2016, the juvenile court sustained the amended petition, declared S.V. a dependent of the court, and ordered him removed from mother's custody and to remain placed with his foster parents.

The court ordered reunification services for mother and again ordered monitored visits between mother and S.V. three times a week, a minimum of an hour per visit. Mother's case plan included participation in a full drug and alcohol program with aftercare, weekly drug testing, and a 12-step program with sponsor, as well as parenting classes, and individual counseling.

## **2. *Reunification period (November 2016 to June 2017)***

### ***a. Programs***

During the six-month reunification period, mother did not make progress on her case plan. She became homeless for a short time in November 2016 when the M.'s fired her, but was living

with them again by December 2017. She missed all of her drug tests. She admitted she used meth in November 2016 due to “her stressful situation” and in February 2017 to “calm herself down.”

Mother told her social worker in February 2017 that she had tried to enroll in an inpatient program but was rejected. She also said she attended an outpatient program for five weeks, but quit after an injury; she had no proof of her participation. At her March 2017 meeting with the social worker, mother asked for help to get into a treatment program. The social worker e-mailed mother that she had made an appointment for mother at an outpatient treatment center and also provided referrals to three inpatient programs. Mother never responded.

Mother also said she had been going to AA meetings, but could not provide proof of attendance. She did not enroll in individual therapy or parenting classes. Mother told her social worker that a doctor at a mental health urgent care told her she did not need medication.

During this period, mother also sent the foster mother and social worker inappropriate and upsetting text messages and YouTube links about children dying in foster care. She accused the Department of “legally kidnapping” her son.

b. *Visitation*

The Department scheduled monitored visits for mother with S.V. twice a week for 90 minutes each visit. The Department reported mother consistently visited her child from November 2016 through February 2017, although she was late to some visits.<sup>3</sup> She missed three visits: two in November due to a

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<sup>3</sup> The record reflects mother attended 12 visits in November and December 2016 and 11 visits in January and February 2017. In its October 11, 2017 section 366.26 report, however, the

transportation issue and a class she was required to attend; and one in February due to lack of transportation.

At these visits mother showed S.V. affection. She held and kissed him, fed him—though sometimes too early—read to him, and brought him clothes and toys. Mother sometimes had trouble with S.V.’s diaper and did not always know how to soothe him. Generally, mother was pleasant and appropriate, although she was concerned about S.V.’s health.

Mother did not visit S.V. for a month between March and April 2017. She missed visits or they were canceled because she was late or failed to confirm. Mother was upset about not seeing S.V. and accused the Department of trying to take him away. Mother visited S.V. sporadically from April to June 2017: she saw S.V. twice in April and in May, and three times in June. She missed some visits and others were canceled.<sup>4</sup> During the visits she had, mother acted less appropriately at times. For example, she pulled S.V.’s hair to show him how it hurt when he pulled hers and let S.V. play with a plastic bag from a toy.

c. *Termination of reunification services*

The Department recommended the court terminate reunification services and pursue a permanent plan of adoption by S.V.’s foster parents. On June 20, 2017, the court terminated mother’s reunification services, finding “the extent of progress

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Department said mother attended only five of 17 visits during January through March 2017. Mother attended one visit in March 2017 plus the 11 in January and February for a total of 12 of 17 visits.

<sup>4</sup> In May and June, mother had to reschedule two visits to attend court hearings in these proceedings.

by mother in alleviating or mitigating the causes necessitating placement are non-existent.” The court also set a .26 hearing for October 17, 2017, to determine S.V.’s permanent plan. Mother missed the June 20 hearing; she was late.

**3. *Mother’s entry into residential treatment program and filing of section 388 petitions (July 2017 to December 2017)***

**a. *Mother’s entry into treatment program and first section 388 petition***

After the court terminated mother’s reunification services, she tried harder to get into an inpatient treatment program. She was placed on a wait list at the end of August 2017.

The Department had modified mother’s visitation schedule from twice a week to once a week after she continually missed visits. Mother had three visits with S.V. in August 2017 and another three visits in September 2017. She was pleasant and appropriate, but did not always adequately supervise S.V.

Mother entered the residential treatment program on September 28, 2017, and had to cancel future visits as a result.

In anticipation of the .26 hearing on October 17, 2017, the Department filed its 366.26 report and recommended the court terminate mother’s parental rights. The report identified S.V.’s foster parents as his prospective adoptive parents. They have adult children of their own. The foster father is a physical education teacher, and the foster mother has a degree in physical education. The foster mother is a stay-at-home parent who home-schooled her children. They are committed to adopting S.V. The social worker observed S.V. to identify foster parents as his parents and to be “very much attached” to them.

On October 17, 2017, mother filed a section 388 petition to modify the court's order terminating reunification services based on her changed circumstances. The court summarily denied the petition and set the .26 hearing for contest in December.

b. *Mother's completion of the program and second section 388 petition*

Mother's residential treatment program complied with her case plan: it included random drug testing, 12-step meetings, parenting classes, and individual therapy. Mother also began to take medication for depression and anxiety when she entered the residential program. Mother completed her inpatient program on November 27, 2017. She then enrolled in an outpatient program with drug testing.

On December 5, 2017, mother filed a second section 388 petition to modify the court's order terminating reunification services and setting the .26 hearing. She based her petition on her successful compliance with her reunification plan. The petition included a letter from mother's counselor at the drug program detailing her improvement; mother's declaration that she is ready to parent her child based on the new skills she has learned; and photographs of mother holding, playing with, and feeding S.V., and helping him walk.

Mother asked the court to place S.V. in her custody or, alternatively, reinstate reunification services and liberalize visitation to unmonitored visits, including overnight and weekend visits, with increased frequency and duration. She also requested an expert bonding study.

The court heard mother's section 388 petition on December 5, 2017. The court granted mother an evidentiary hearing on the petition, but denied her request for a bonding



study.<sup>5</sup> The court set the hearing on the 388 petition, with the .26 to trail, for January 31, 2018.

c. *Department's section 388 response report*

On January 25, 2018, the Department filed its January 31, 2018 section 388 response report. A dependency investigator social worker (DI) conducted interviews, observed S.V. in foster parents' care, and read the case file.

By the time of the December 5, 2017 hearing, mother had retained private counsel. Mother's attorney was present when the DI interviewed mother. The DI asked mother about her problems that led to the dependency. Mother explained she went into a depression in 2013 after her father died. She used meth because she believed it helped her, but now realizes it did not. She recognized she was in pain, did not want to deal with her problems, and had blamed the Department. When asked about her "triggers," mother responded, " 'I kind of don't have triggers.' " She explained, " 'Now I see I have choices. I have tools to protect myself. I cho[o]se not to use no matter what. It's possible.' "

The DI also inquired about mother's enrollment in programs. Mother said she had tried to get into a program since March 2017, but could only get onto a waitlist because her social worker would not help her. She said she attended parenting classes on and off, but was still " 'stuck on that thing (meth).' " Mother discussed her participation in the residential treatment program. She said, " 'If you're not in recovery, th[e]n you have room for relapses.' " She also told the DI she has been on

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<sup>5</sup> The child's counsel joined the Department in arguing against granting mother an evidentiary hearing.

medication for depression and anxiety since she entered her treatment program in September 2017.

Regarding her visitation with S.V., mother said she “love[s]” her visits. She expressed frustration about getting only one visit a week. She wished she could spend more time with S.V. She also said that from March through May 2017, she showed up for visits, but no one was there. The Department reported she did not show up. She admitted getting there late, and said she began to sleep in the train station so she would make it on time. She believes the Department “preys on victims like me.”

Mother told the DI she wanted a second chance to prove she can be a good mother to S.V. She said he does not want to leave when their visits are over. She can tell S.V. knows she is his mother; they have a bond.

Mother lives in the back house of the elderly couple, the M.’s, for whom she now works again. She is their caretaker and cleans for them. They are like a family to her.

The DI interviewed the foster parents about mother’s petition. The foster father did not think mother was able to parent S.V. and meet his special needs based on her history. The foster parents are concerned about mother’s lack of transportation when S.V. has weekly occupational and physical therapy sessions. They did not support unmonitored visits.

The DI also spoke to mother’s drug counselor. She confirmed mother is committed and fully participates in group sessions. All of mother’s drug tests have been negative.

On January 10, 2018, the foster family social worker reported mother was consistent in her visits with S.V., appropriate, and on time. She did not have any concerns with

the visits. She noted mother requested S.V. be taken to the doctor almost every week and was upset about his health.

The DI concluded that, “[w]hile the mother appears to be motivated and reports to be ready to receive Family Reunification services, the mother has not obtained the necessary services to help her develop insight as to how her addiction and trauma has impacted her as an adult and further, as a mother.” The DI noted mother continues to blame the Department for not helping her, targeting her, and “twist[ing] her words” to “use . . . against her.”

The Department recommended the court deny mother’s section 388 petition. It noted S.V. had been living with foster parents since his birth, had built an attachment to them, and appeared to be safe and protected in their care.

d. *Visitation November 2017 to January 2018*

Mother resumed her visits with S.V. on November 3, 2017. At that point, S.V. was one year old. She consistently visited S.V. weekly. (She had to cancel a visit in November due to lack of transportation, and the monitor had to cancel a visit in January.) The visits were pleasant and appropriate. Mother was affectionate with S.V. She gave him hugs and kisses, held him, read to him, brought him toys and books, played with him, walked with him, took photographs of him, and watched videos with him. S.V. smiled, babbled, and generally was happy with mother. Mother also went to S.V.’s doctor’s appointment in January 2018.

4. ***Evidentiary hearing and related proceedings  
(January 2018 to December 2018)***

The combined section 388 and .26 evidentiary hearing began January 31, 2018, and testimony—summarized below—

did not conclude until December 10, 2018.<sup>6</sup> During the year-long hearing, the court also considered mother's requests for a bonding study and liberalized visitation, which we discuss below. In all, six witnesses testified over the course of the year,<sup>7</sup> and the court received into evidence numerous exhibits, including the Department's reports and visitation logs, documents concerning mother's participation in programs and therapy, emails, photographs, and videos of S.V. with mother and with his foster family.

a. *Mother's request for court-ordered visitation and renewed request for a bonding study*

Although the court had ordered visitation to occur three times a week for a minimum of an hour each visit, mother had been receiving only weekly visits. Mother's counsel raised the issue on February 8, 2018, and the court ordered the Department "to ensure" the visitation order was honored by the Department and S.V.'s foster parents.

On May 18, 2018, mother renewed her request for a bonding study. At that point mother had completed her inpatient program, had been in her outpatient program for six months with three weeks left, had completed her parenting program, and was continuing weekly individual and group therapy. Mother's counsel argued a bonding study was necessary to assess the

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<sup>6</sup> The judicial officer assigned to the case changed as of April 2018.

<sup>7</sup> Through no fault of mother, numerous continuances occurred during the evidentiary hearing due to counsel's absence as a result of family and medical issues, the judicial officer's illness, and the court's heavily congested calendar.

relationship between mother and S.V. to demonstrate granting mother's section 388 petition was in his best interests. Until recently, mother had seen her son only once a week. Nevertheless, the visitation logs, at least since November 2017, showed mother "doing parenting things." Only the monitors, who were not qualified to testify about bonding, had observed the visits, however, leaving the court without an expert to assist it in determining the parent-child bond.

The court denied the motion without prejudice to renew it at the conclusion of the evidence on the section 388 and .26 hearings.

b. *Mother's request for liberalized visitation*

At the June 19, 2018 hearing, mother asked the court to liberalize her visits to unmonitored or, alternatively, increased hours at mother's home with the M.'s by having Mr. M. act as a monitor.<sup>8</sup> S.V.'s counsel joined in mother's request for additional hours. The court denied the request for unmonitored visits, but said it would revisit the issue if the Department approved Mr. M. as a monitor.

On July 25, 2018, mother's counsel, joined by S.V.'s counsel, again requested liberalization of mother's visits. The court said it was inclined to allow unmonitored visits in a neutral public setting, but set the issue for a later hearing pending the social worker's recommendation.

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<sup>8</sup> Mother had testified she lived with the M.'s, caring for Mrs. M., since 2013 except for the period from January 2017 to September 2017 when she said she was homeless. She lived in their back house, but testified the couple would give her a room in the main house to live with her son if he were returned to her custody.

The Department filed its August 17, 2018 last minute information for the court to report its findings and recommendation. A social worker interviewed S.V.'s foster parents. They said they were concerned that, if S.V. were returned to his mother, she might not have the stability S.V. needs. The social worker also interviewed S.V.'s physical therapist.<sup>9</sup> She said mother attended S.V.'s physical therapy appointments, asked appropriate questions, and gave feedback on what she had been doing with S.V. during her visitation. She said the foster mother is able to care for S.V.'s needs and mother is a likable person.

The foster family social worker told the Department mother always confirms her visits the day before and is on time. The current monitor said mother is appropriate in her visits with S.V., and the visits are positive. She said mother seems to love S.V. and he is happy with her. She observed one or two times when S.V. cried when transitioning from foster mother to mother at the beginning of the visit and when transitioning from mother to foster mother at the end of the visit.

The Department recommended denying mother's request for unmonitored visits "[c]onsidering the best interest of [S.V.],

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<sup>9</sup> Due to S.V.'s prenatal exposure, he experienced global delays. Earlier, on June 1, 2018, S.V.'s early intervention specialist reported S.V. was awaiting approval for speech therapy, was receiving physical and occupational therapy and early intervention therapy every week, and possibly would need to attend special education classes when he turns three. The foster parents had been consistent with therapy appointments and had been providing S.V. stimulating activities to address his delays.

that the child has lived most of his lifetime with foster parents with secure attachment.”

The court heard testimony on the issue of liberalized visitation on August 17, 2018, and further argument on September 14, 2018. Mother’s counsel argued the reason for monitored visits—concerns over mother’s drug use—no longer existed. She had been clean and sober for a year and did not pose any safety risk to her son. S.V.’s counsel joined in mother’s request. She argued the evidence showed S.V. was attached and bonded to mother. The court found mother “has made a significant amount of progress.” It believed changing the visitation setting to a place like a park or playground “could invite different dynamics” that could benefit S.V. The court also believed unmonitored visits “could inform the court regarding the issues on the 388, which ultimately go to the best interest of [S.V.]” It ordered mother’s visits be changed to unmonitored in a neutral and public setting immediately.<sup>10</sup>

c. *Summary of testimony*

i. *Mother’s testimony*

Mother testified on January 31, May 18, and November 29, 2018. Mother’s first language is Serbian. She can speak and understand English, but sometimes finds herself misunderstood by others.

Mother admitted she was using drugs from S.V.’s birth in October 2016 until June 20, 2017. She considers her sobriety date September 27, 2017, when she began her recovery program, but has been sober since late June 2017. She said the termination of her reunification services on June 28, 2017, was

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<sup>10</sup> Mother’s next scheduled visit was September 18, 2018.

her “wake-up call,” and said “that’s when I really start[ed] to get myself in [a] program.”

Mother testified about the reunification period. She described herself as “really deep in my addiction” in March 2017. She again said she tried to get into a program, but her social worker did not help her. She attended an outpatient program on her own for two weeks. She testified she was homeless at the time and traveled by train to her visits with S.V. She missed visits due to public transportation delays. Her visits between February and April 2017 were cancelled because she was too late or considered a no-show. She said she e-mailed the scheduler; she did not always have a phone during that period.

Mother also testified about her visits with S.V. She was not permitted to leave her treatment program to visit S.V. when she first enrolled in it at the end of September 2017. She said S.V. was permitted to visit her there, but the foster mother never brought him.<sup>11</sup> She was able to travel to see her son in November 2017.

Mother testified that at their visits, S.V. reaches for her and smiles. She is affectionate with him, kisses and hugs him, reads to him, and plays with him. When mother’s visits increased, she felt S.V. became more attached. He kisses her back. She said he has a big smile on his face when he sees her and is excited. She holds his hands when it is time to go and tells him, “I’ll see you soon. I love you.” She testified that sometimes S.V. did not let go of her shirt when it was time to leave. One time, while mother was holding him, S.V. put his head on her

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<sup>11</sup> Foster mother did not remember anyone asking her to bring S.V. to mother.



shoulder as if he did not want to go. By November 2018, S.V. called her “mom.” Mother believes her bond with S.V. is strong and warm.

Mother attended S.V.’s doctor’s appointment in January 2018 when he received immunizations. Although his foster mother also was there, S.V. reached to mother and put his hand on her stomach for comfort. Mother also has attended S.V.’s weekly physical therapy appointments since February 2018 and has received direction from his therapist.

Mother explained what the Department had described as her chronic concerns about S.V.’s health. S.V. was hospitalized at five weeks old for a respiratory illness and then diagnosed with pneumonia in 2018. Before those illnesses, mother had asked that her child be taken to a doctor, but he was not. At some point, the social worker told mother that she could attend S.V.’s doctor’s appointments.<sup>12</sup>

Mother described her plans to maintain her sobriety. She plans to continue her group therapy and aftercare program. She is attending AA, NA, and working with her sponsor. She testified she has a “great support system” with people whom she can call. The M.’s understand what she is going through—she can leave her work to attend a meeting.

Mother also explained her statement to the DI in the Department’s section 388 report that she did not have triggers. She meant that she now knew what her triggers were and

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<sup>12</sup> Mother testified about other concerns she had about S.V.’s health: he had severe diaper rash with open sores for a period of time, he injured his finger in a door or cabinet causing his nail to fall off, another foster child of the family had hit S.V. in the face, S.V. twisted his leg at some point, and he is anemic.

prevented them from happening. She also understands she has tools to use in the face of stress.

Mother has a place for S.V. to sleep in a crib that can transform to a bed where she lives with the M.'s. Because she lives where she works, S.V. can remain with her and does not need to go to childcare. She plans to continue with his therapy. Mother testified that she was grateful to S.V.'s foster parents for caring for him when she could not, but raising him is her priority and she is capable and ready to provide for his developmental needs. She understands their importance to S.V., however, and wants him to continue a relationship with them.

ii. *Mother's therapist*

Mother's therapist Alik Segal wrote a letter in support of mother's petition and testified on her behalf on July 23, 2018 and November 15, 2018. In his April 22, 2018 letter, he described mother as "sincerely committed [to] being a better person and a better mother." He wrote that mother "speaks earnestly about her mistakes, the impact those mistakes had on others including her son, the serious consequences she has faced, and her desire and commitment to grow as a person. [Mother] is actively working on her issues and in my opinion has demonstrated strong growth in treatment."

Between April and July 2018, when Segal first testified, mother had about 20 therapy sessions. He opined mother's "sobriety is strong," elaborating that mother had maintained sobriety "for . . . quite a long period now" while under "tremendous pressure."

He did not agree with the Department's statement in its January 2018 report that mother had no insight into how her actions placed her son at risk. Segal testified mother has insight,

understood her triggers, and had acquired new coping skills. Segal also disagreed with the report's statement that mother had not addressed the issues that led to her substance use. He described mother as having "learned to be open to treatment. She's learned to be responsible for her mistakes, both old ones and new ones. She . . . is learning new ways of handling stress. She is putting on a heroic effort to be in therapy for someone who doesn't have a car, and had difficulty finding a therapist." Segal testified mother understood her weaknesses and was working on developing strengths in those areas.

Segal read the visitation logs and saw the photographs of mother and S.V. Mother and S.V. looked like mother and child in the photographs. S.V. was leaning in and cheek to cheek with mother. The child seemed comfortable with mother from his reading of the logs. He noted the improvement in mother's parenting of S.V. as the months went by. He opined S.V. and mother were relating as mother and child, but noted he was not an expert in bonding and could not give an expert opinion. He explained an unattached child would be "indifferent, . . . scared, . . . [or] uncomfortable." Segal did not feel mother had any "mental barrier" to being able to care for her child.

By November 2018, Segal had observed one of mother's unmonitored visits with S.V. at a park. He testified mother's relationship with S.V. "is normalizing" and "becoming both more solid and more relaxed." Segal said S.V. "seemed very focused on [mother]" and would "periodically turn around and look to see where [she is]." Mother took his suggestion to vary her pitch and get into character when reading to S.V. To Segal that showed mother "is motivated to adjust her parenting to [S.V.'s] needs." During the visit he observed, mother was focused on S.V. and

dotting on him. Segal had no concern about mother's ability to parent S.V. He testified he saw evidence of a strong recovery in mother. He continued to observe—even more strongly—no mental barrier to mother being able to care for S.V.

Segal agreed with the Department's counsel's statement that mother currently is not in a parental role with S.V. He then clarified he meant mother currently was not parenting S.V. full time. Segal has never met S.V.'s foster parents and does not know about his day-to-day life. He testified he could "only say that [mother] is a fit mother and [S.V.] would be both safe and loved with her and cared for appropriately."

iii. *Social worker Anne Zepeda*

DI Zepeda drafted the Department's January 2018 section 388 response. She testified that for purposes of drafting the section 388 report, "it's important to assess if there's a bond between a parent and the child or the caregiver and the child. That's what we look for when we're assessing as well as other factors that could play into whether the child is safe with the caregiver or the parent."

Zepeda never observed mother with S.V. Zepeda based her assessment of the bond between S.V. and mother solely on the visitation logs through the time she wrote the report in January 2018. She testified the pre-November 2017 logs did not demonstrate a parent-child relationship between mother and S.V. She agreed struggling with a stroller or diapering was not a reason to withhold visitation or custody from a parent. She also admitted mother wanted to assist in S.V.'s care and had attended his therapy appointments.

Zepeda did observe the foster parents with S.V. She found S.V. shared a parent-child relationship with them. She described

S.V. as happy and running around. When he was upset, he ran to foster mother who soothed him. Zepeda agreed if mother's visitation notes described similar behavior—that S.V. smiles upon seeing mother, they play, she cuddles and soothes him—it would show a parent-child interaction. Zepeda had not read the last six months of visitation logs following her drafting of the January 2018 report.

Zepeda was concerned about mother's ability to transport S.V. to his services. She agreed there had been a change with mother given her participation in treatment, the positive input from that program's provider, and her consistent visitation since November 2017. But Zepeda did not believe that—as of January 2018—there had been sufficient time for mother to work on her substance abuse issues to consider reunification. Also, at that time mother's visits had been consistent only since November 2017 (when she completed her residential treatment program), which was “only three months.” Zepeda considered “consistent” visits to mean not missing any visits or having only one or two missed visits. She thus found mother's visits with S.V. during his first 11 months to be inconsistent.

Zepeda was asked about her statement that mother “had not obtained necessary services to develop her insight.” Zepeda answered she was referring to “the fact that [mother] couldn't verbalize her triggers.” She took mother's response that “‘I kind of don't have triggers’ ” to mean mother believed that she did “not have triggers whatsoever.” That statement affected Zepeda's decision to recommend the court deny mother's section 388 petition.

Zepeda testified she found mother's blaming of the Department for her inability to get into a program in the spring

of 2017, and negative statements mother attributed to social workers, showed mother lacked insight. The court questioned Zepeda about her interpretation of mother's negative comments about the Department as her not taking responsibility. Zepeda agreed with the court that the process "can bring about negative feelings" from the client "[r]egardless of whether or not they're accepting responsibility." Zepeda considered the context in which mother had presented her feelings.

iv. *Social worker Joy Huang*

Social worker Huang was the children's social worker (CSW) or case caring worker. She was a "trainee" until July 2017, after mother's reunification services were terminated. This was one of Huang's first cases. As a CSW, she met once a month with mother and with S.V. during the reunification period. Once reunification services terminated, however, she no longer met regularly with mother.

During the first six months of the case, Huang did not feel she could counsel mother. She sensed mother "h[e]ld a lot of anger." Huang met with mother two weeks before Huang testified in December 2018, however, and they had a "very smooth conversation." She saw a change in mother and feels that mother is "on the right place of recovery." She believes mother is sober now.

Huang remained concerned, however. She described the transfer of S.V. to mother for her first unmonitored visit in September 2018 as "frustrat[ing]." Mother asked her if S.V. was potty-trained, and Huang told mother she needed to speak with Jane, the foster mother. Huang felt mother reacted to her defensively. She testified that mother "would say, [']No,

I know how to take care of my child.[ ] ” She felt mother “misinterpret[ed]” her and was “ready to fight with her.”

When asked about the reported September 2018 incident when S.V. fussed when getting into his car seat (discussed below), Huang agreed it was “normal” behavior for a toddler to fuss like that.

Huang testified S.V. was stable in his foster family’s home. In her opinion, she did not know if mother could take care of S.V. at that point. Yet, Huang read the visitation logs for the past year and admitted they showed “no significant concerns.” She testified mother “did a good job. She has a positive way to interact with the child.” Huang observed only one visit between mother and S.V., about a month before she testified in December. Huang had no evidence that mother posed a safety risk to S.V. She believed mother loved her son, that it was a mother’s “instinct.”

Huang agreed S.V. was making progress. At his 24-month assessment in September 2018, S.V. scored above the cut-off for development in communication, gross motor skills, and fine motor skills. In the December 4, 2018 status review report, Huang wrote that each week S.V. received group therapy, physical therapy, occupational therapy, speech therapy, and child development. Huang agreed mother was capable of interacting with S.V. and the therapist at S.V.’s sessions.

Huang testified she believed moving S.V. from his current home would be traumatic because he has developed an attachment to his foster parents. She believed that if he had been moved at six months, the experience would not have been traumatic because he was a baby.

Huang testified she did not know if S.V.'s foster mother would let mother be a part of S.V.'s life if she adopted S.V.

v. *Foster mother*

S.V.'s foster mother Jane<sup>13</sup> testified on August 17, 2018, on the issue of mother's request for unmonitored visits, and again on December 6 and 10, 2018. Since S.V. was a few days old, he has lived in foster parents' home with Jane and her husband Alex, and at times with their adult children and another foster child.<sup>14</sup> Jane and Alex had three other foster children who had returned to their families before S.V. came to live with them. Jane testified that she and her husband have all of their foster children call them " 'Mama' and 'Daddy' because we feel like that's who we are for them at the time." In August, S.V. was not talking much. He called his foster father "Daddy," and sometimes called Jane, "Mama."

Jane testified S.V.'s therapy appointments began when S.V. was about four months old. Child development and speech therapists come to Jane's home, and she takes S.V. to a clinic for his physical and occupational therapies. Jane believed she was the most important person to continue with S.V.'s therapy because she has been doing it from the beginning and is with S.V. every day; she "know[s] his little ways."

Jane admitted mother purchased special insoles for S.V.'s shoes and a walker that had cognitive stimulation toys on it.

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<sup>13</sup> We refer to the foster parents by their first names or as "foster mother" and "foster father" to preserve their anonymity.

<sup>14</sup> That foster child, who was 22 months old, left the home in December 2018. As of December, their 20-year old daughter was at home and their 23- and 24-year old sons were at school.



Before he was walking, mother also bought a therapeutic roller for him to encourage him to crawl.

In August, Jane testified about her concerns about mother having unmonitored visits with S.V. Some of her concerns were based “on the unknown” and mother’s past absences. She confirmed she had “normal safety concerns that one might have for a two-year old.” She also was concerned about S.V. living in an environment without a father.

As for mother’s monitored visits with S.V., Jane admitted she was present for the exchange only, not for the visit itself. She never sat in and observed mother’s interactions with S.V.

Jane testified about the communication problems she has had with mother in the past. In early 2017, at the social worker’s recommendation, Jane blocked mother’s email and number after mother sent her upsetting emails. Jane agreed mother was communicating her “upsetness” to her. She said mother was upset that her child had been taken, “and [mother] felt like there was some unfairness with DCFS is what I’m thinking.” Their communication improved at the end of summer or early fall 2017.

They had another issue during the exchanges at mother’s first two unmonitored visits in September 2018. Jane described the September 18 incident when she picked up S.V. from his visit with mother. She reminded mother to turn the car seat to rear-facing and they argued. Jane testified she was concerned by mother’s angry “outburst”; mother “was talking and yelling” at Jane that she “shouldn’t be arguing with her in front of her son.” Jane said mother’s tone and demeanor were “very angry.” Jane clarified that by “yelling” she meant mother was speaking in a “loud, strong voice.”

Jane also described the incident on September 21, 2018. She was concerned about the exchange she had with mother when she dropped S.V. off. S.V. had just woken up when Jane handed him to mother. She watched mother put him in his car seat; he was crying and struggling to get out. He almost fell out and mother pushed him back in, shut the door, and said she would buckle him in from the other side. Jane was worried that he could have fallen out or gotten his hand smashed in the door when mother closed it. She agreed, however, that it was normal for a child sometimes to struggle when getting into a car seat. Jane also described mother yelling at her about taking pictures when Jane actually was texting her husband to let him know she had dropped off S.V.

In December, Jane testified their communications had improved after those incidents. They exchanged phone numbers again in November 2018 and were communicating “cordial[ly]” for exchanges.

Since November when Jane resumed taking S.V. to his unmonitored visits, Jane had observed mother with S.V. for about two minutes at each visitation exchange. She said S.V. “gets along with [mother] fine. Like another family member, like any other therapist, he enjoys going to play.”

Jane testified mother does not ask her about what S.V. likes to do, where he likes to go, or his routine, other than his nap schedule. She confirmed that since S.V. began unmonitored visits with mother, he has not come home and asked for her. She testified the unmonitored visits had not changed S.V.’s routine at home.

vi. *Foster father*

S.V.'s foster father Alex testified in December.

He testified about a time in May 2018 when mother got upset with him during the exchanges. Father arrived early to the visitation site and walked up to mother and S.V. when they came outside because S.V. looked happy to see him. Mother told him she still had time left in her visit. He responded that he knew, but he had thought it was time because they had come outside and S.V. was happy to see him. Mother replied, S.V. "is happy to see me too. I was the one who gave him birth. He was with me for nine months.'" Alex said it was clear he had upset her, but believed there was a misunderstanding.

Alex testified he wanted to adopt S.V., even though they had no intention of adopting when S.V. first came to them. He said S.V. calls him "Da, Daddy, or Dad.'" He testified he "absolutely" was willing to allow mother to have a relationship with S.V. if he adopts him, but he does have concerns. It would depend on mother's behavior, if their relationship with her were good. Having not known his own father, Alex believed it is important for a child to know his biological parent "if it's safe."

d. *The court's rulings*

i. *The court's denial of the section 388 petition*

The court heard argument on mother's section 388 petition on December 11, 12, and 13, 2018. On the issue of S.V.'s best interests, mother's counsel argued "the court has to look at whether removing [S.V.] from [foster parents'] home and transitioning the baby back to mother with whom he shares that intangible, natural parent connection can be done safely." S.V.'s counsel joined in mother's argument and asked the court to make a transition plan and return S.V. to mother's custody.

The Department’s counsel argued it was not its burden to prove “it would somehow be dangerous to have [S.V.] removed from his current setting and place[d] with . . . mother. It is [mother’s] burden to show that there would be absolutely no problems.” Counsel asked the court to leave S.V. in his current home.

On December 17, 2018, the court denied mother’s petition. The court found mother had demonstrated prong one of section 388—changed circumstances. It focused its remarks on prong two—the best interests of the child. The court prefaced its analysis by stating,

“So while this court makes the inquiry as to the second prong, which is the best interest of the child, and considers what was discussed in *In re William B.* [(2008) 163 Cal.App.4th 1220, 1227], which is maximizing a child’s opportunity to develop into a stable, well-adjusted adult, the court asks itself after listening to all the evidence, what is going to maximize [S.V.’s] opportunity to develop into a stable, well-adjusted adult?”

The court then said it “thinks about” where the child would be “given the best chance of success[,] . . . [n]ot in the way of economic needs,” but from “growing up in a nurturing environment that conveys [a] sense of stability” and “unconditional love” where the child would know his parent or parents “are there to ensure the child’s growth and to provide guidance and support regardless of what’s occurring in that parent’s life. Essentially, an unwavering commitment and bond to that child that cannot be severed. So that is what the court looks at and considers when it’s considering [S.V.’s] best interest.

Not the best interest of [mother] and not the best interest of [foster parents].”

To reach that determination, the court considered: (1) “the challenges [S.V.] faces due to being born drug exposed”; (2) “not only the nature and the quality of the visits [mother] has had, but also how she’s progressed in her communication style and in her ability to accept responsibility and also in her interaction with the caretakers”; and (3) “severing the bond with the caretakers, who have been [S.V.’s] only caretakers for his entire life,” qualifying it was “not giving it additional weight than it [was] giving to [S.V.] being reunited with his mother and the interest . . . the Legislature certainly has in families being reunited.”

After addressing each, the court concluded that “although there has been progress in change, those changes and all that progress simply does not convince the court that it’s in the best interest of [S.V.] to be returned to his mother.”

ii. *The court’s termination of mother’s parental rights*

After denying mother’s section 388 petition, the court found the Department had met its burden to demonstrate S.V. was adoptable. Mother’s counsel, joined by S.V.’s counsel, argued that the beneficial parent-child exception to termination of parental rights applied. (§ 366.26, subd. (c)(1)(B)(i).)

On December 21, 2018, the court concluded no exception to adoption applied. It found mother had not maintained regular visitation, had “not really established a bond with the child,” and “any benefit accruing to [S.V.] from his relationship with [mother] is outweighed by the physical and emotional benefit that [S.V.]

will receive from the permanency and stability of adoption.”

The court then terminated mother’s parental rights.

On January 3, 2019, Mother filed a notice of appeal from the court’s orders denying her section 388 petition and terminating her parental rights.<sup>15</sup> S.V. filed a separate notice of appeal from those orders on January 7, 2019.

## DISCUSSION

### 1. *Mother’s section 388 petition*

#### a. *Applicable law*

“A parent’s interest in the companionship, care, custody and management of his children is a compelling one, ranked among the most basic of civil rights. [Citation.] Likewise, natural children have a fundamental independent interest in belonging to a family unit [citation], and they have compelling rights to be protected from abuse and neglect and to have a placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to the child. [Citation.] The interests of the parent and the child, therefore, must be balanced.” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 306 (*Marilyn H.*)).

“The Legislature has declared that California has an interest in providing stable, permanent homes for children who have been removed from parental custody and for whom reunification efforts with their parents have been unsuccessful.” (*Marilyn H.*, *supra*, 5 Cal.4th at p. 307.) Once reunification

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<sup>15</sup> Mother also appealed from the court’s orders denying her request for a bonding study and request for a stay of the .26 hearing. Mother does not separately address those issues in her briefs.

services have been terminated, the court's focus must shift to "the child's placement and well-being, rather than on a parent's challenge to a custody order." (*Ibid.*)

The Legislature also has recognized "that, in order to prevent children from spending their lives in the uncertainty of foster care, there must be a limitation on the length of time a child has to wait for a parent to become adequate." (*Marilyn H., supra*, 5 Cal.4th at p. 308.) Thus, while there is a presumption that the child will be returned to parental custody, "[o]nce reunification services are ordered terminated, the focus shifts to the needs of the child for permanency and stability." (*Id.* at p. 309.)

Section 388, however, provides an " 'escape mechanism' . . . to allow the court to consider new information." (*Marilyn H., supra*, 5 Cal.4th at p. 309.) "Even after the focus has shifted from reunification, the scheme provides a means for the court to address a legitimate change of circumstances while protecting the child's need for prompt resolution of his custody status." (*Ibid.*) "The presumption that arises after termination of reunification services is [ ] that continued care is in the best interest of the child. The parent, however, may rebut that presumption by showing that circumstances have changed that would warrant further consideration of reunification." (*Id.* at p. 310.)

b. *Standard of review*

The denial of a section 388 petition is "committed to the sound discretion of the juvenile court, and [its] ruling should not be disturbed on appeal unless an abuse of discretion is clearly established." (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318 (*Stephanie M.*)) " "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When

two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.” ’ ” (*Id.* at pp. 318-319.)

c. *The court did not abuse its discretion when it denied mother’s section 388 petition*

“The essence of a section 388 petition is the petitioner’s assertion that she or he can demonstrate, by a preponderance of the evidence, that new evidence or a change of circumstances exists warranting a finding that the best interests of the minor child will be served if a previous order of the court is changed, modified or set aside.” (*In re Marcos G.* (2010) 182 Cal.App.4th 369, 382.)

Here, the juvenile court found mother had changed her circumstances. She had remained sober for 15 months, tested clean, and continued to participate in counseling and a 12-step program. She never relapsed after her September 2017 sobriety date. The Department does not dispute the court’s finding of changed circumstances. Thus, the only issue on mother’s section 388 petition is whether return of S.V. to mother was in his best interests based on mother’s changed circumstances.

i. *The best interests of the child standard*

The best interests of the child standard is complex. The juvenile court must not simply compare one household to the other or the purpose of section 388 as an escape mechanism would become “a sham.” (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 530 (*Kimberly F.*)). Rather, the juvenile court considers and weighs a number of factors. The court of appeal in *Kimberly F.* summarized those factors as “(1) the seriousness of the problem which led to the dependency, and the reason for any continuation of that problem; (2) the strength of relative bonds between the



dependent children to *both* parent and caretakers; and (3) the degree to which the problem may be easily removed or ameliorated, and the degree to which it actually has been.” (*Id.* at p. 532.)

The juvenile court here did not explicitly weigh these factors in reaching its conclusion, but may have done so implicitly. In any event, the court in *Kimberly F.* acknowledged its list of factors is not “exhaustive,” but “provide[s] a reasoned and principled basis on which to evaluate a section 388 motion.” (*Kimberly F.*, *supra*, 56 Cal.App.4th at p. 532.) Moreover, we must keep in mind our Supreme Court’s direction that “after reunification services have terminated, a parent’s petition for either an order returning custody or reopening reunification efforts must establish how such a change will advance the child’s need for permanency and stability.” (*In re J.C.* (2014) 226 Cal.App.4th 503, 527 [referring to holding in *Stephanie M.*].)

ii. *The juvenile court reasonably could conclude it was not in S.V.’s best interest to return to mother’s custody*

In determining what would “maximize [S.V.’s] opportunity to develop into a stable, well-adjusted adult,” the court primarily considered the challenges S.V. faces due to his prenatal drug exposure, and mother’s communication and interaction with S.V.’s caretakers. The court described at length S.V.’s “global delays” as a result of his prenatal exposure to methamphetamine, the various therapies S.V. had undergone and was continuing to undergo each week, and the future services he would need, including possible special education at age three. The court, however, did not expressly find mother incapable of taking S.V.

to his therapy appointments. Nor would the record support such a finding.

Rather, in finding it was not in S.V.'s best interests to be returned to mother's care, the court focused on mother's communications with foster mother and social workers during the exchanges at mother's first two unmonitored visits in September 2018.

S.V.'s and mother's counsel contend the court's denial of mother's petition on these grounds—in light of all of the other evidence—was an abuse of discretion. While we find it curious that the court focused on the two September incidents as the centerpiece of its ruling, we cannot agree that the court's decision was “arbitrary and capricious under the factual circumstances of this case,” as S.V.'s counsel argues. Nor do we agree with S.V.'s counsel that the court did not base its decision on S.V.'s relationship with his foster parents. We agree the court did not cite that relationship as the *sole* basis to deny mother's petition, nor should it have (as S.V.'s counsel notes), but the court expressly said it considered as a separate factor “severing the bond with the caretakers, who have been [S.V.'s] only caretakers for his entire life.” The court also noted S.V. had been in foster parents' home for two years.

We thus infer the court did in fact consider S.V.'s longtime care by his foster parents and relationship with them as part of its analysis that S.V.'s reunification with mother was not in his best interest. (*Kimberly F.*, *supra*, 56 Cal.App.4th at p. 531.)

We consider both the express and implied bases for the court's ruling, keeping in mind “we may uphold the ruling ‘on any basis presented by the record whether or not relied upon by the trial court.’” (*Alamo v. Practice Management Information Corp.*

(2013) 219 Cal.App.4th 466, 481, fn. 5 [“we review a trial court’s ruling, not its reasoning”].) We also are mindful that at this stage of the proceedings—after termination of reunification services—the court’s focus must be on S.V.’s need for permanency and stability. (*Marilyn H.*, *supra*, 5 Cal.4th at p. 309.)

(a) *The September 2018 interactions  
and S.V.’s needs*

In considering mother’s “communication style,” “ability to accept responsibility,” and “interaction with the caretakers,” the court emphasized the September 18 and 21, 2018 incidents, as described in the Department’s December 4, 2018 Status Review Report.

The court found the two incidents “troubling.” The court, apparently reading from the report, described mother as becoming defensive and stating, “ ‘He is my child. I know how to take care of my child,’ ” after the social worker Huang “encouraged mother to communicate with [S.V.’s] caretaker about [his] needs” on September 18. Mother also became angry and defensive when Huang tried to tell mother she needed to turn the car seat around and again when Huang said she would observe mother’s visit for a bit.

The court described mother as getting “instantly upset” and having “screamed” at Jane when she tried to tell mother and show her how the car seat needed to be rear-facing that same day. When Jane testified, she described mother as “yelling” and clarified “yelling” meant “[a] very loud voice and heightened expression.” When asked if she made a distinction between “a scream and just a loud, strong voice that’s upset,” foster mother answered, “Yes. I would say it was a loud, strong voice. But it got louder as I was walking away.”

The court described how mother again got upset on September 21 when she was trying to put a struggling and crying S.V. into his car seat, had to put him into the seat by force, and then closed the door and went around to the other side of the car to buckle him in. Finally, the court described the foster family social worker's report that she "tried to address [the] car seat issues with mother[.] . . . The mother was upset and kept talking and did not let her talk."

The court concluded these interactions demonstrated mother put her interests ahead of S.V.'s. The court explained it "had concerns that [mother] wants to essentially parent on her own terms. And she didn't make consistent efforts to communicate with the caretakers, and oftentimes treated them as though they were the enemy. And the court really questions itself and wonders how that . . . would demonstrate a mother putting her own interest separate and aside from her child's best interest. And the court believes in many of those instances, she was not. She was putting her own interest before those of [S.V.]."

The court also said, "The defensiveness and the anger in the sense of speaking of [S.V.] as though he is chattel is something that really weighed heavily on the court's mind when the court was determining what was in the best interest of [S.V.]."

We acknowledge a reasonable fact finder could interpret these interactions differently than the court here did. But this court's job is not to reweigh the evidence. The trial court heard the testimony and assessed the witnesses' demeanor and credibility. That more than one reasonable inference can be drawn from the evidence does not demonstrate the court abused its discretion. What matters is whether the court reasonably

could infer these interactions demonstrate that mother was not yet ready to put her needs aside for S.V.'s. (*Stephanie M.*, *supra*, 7 Cal.4th at p. 319.) We conclude it could.

Although these were but two incidents, they occurred when mother was given greater responsibility for S.V. through unmonitored visitation. The court had noted that giving mother unmonitored visits could help “inform” the court on the best interest issue. While witnesses agreed struggling to get a child in a car seat is normal, the court could conclude mother’s instant anger and defensiveness over perceived slights—that she did not know her child’s needs, that she was being watched to see if she would make a mistake—show she was putting her own emotional needs before S.V. Such incidents may seem minor, but after termination of reunification services the court must put the child’s well-being above the parent’s challenge to removal. (*Marilyn H.*, *supra*, 5 Cal.4th at p. 307.)

Moreover, the court did not consider these interactions in a vacuum. The court also took into account S.V.’s challenges and developmental needs. We can infer the court concluded mother’s resistance to the persons responsible for S.V.’s care in September raised concerns that mother would resist needed help for S.V. in the future because, as the court said, mother wants to parent on her own terms.

During the September interactions, mother reacted negatively to what essentially was advice or direction about her son. The court could conclude S.V. may not be able to count on mother to fulfill his needs as a result. For example, mother might become defensive in response to direction from one of S.V.’s therapists, service providers, or teachers—believing she, not they, knew what was best for S.V. Although S.V.’s delays continue to

improve, given the number of therapy sessions S.V. must attend each week and his possible need for special education, his parent's ability positively to accept feedback from his service and health providers will be critical.<sup>16</sup>

(b) *S.V.'s bond with foster parents and time in dependency*

"[T]he strength of a child's bond to his or her present caretakers, and the length of time a child has been in the dependency system in relationship to the parental bond are . . . vital." (*Kimberly F.*, *supra*, 56 Cal.App.4th at p. 531.) Although the child's "bond to the caretaker cannot be dispositive [citation], lest it create its own self-fulfilling prophecy, . . . the disruption of an existing psychological bond between dependent children and their *caretakers* is an extremely important factor bearing on any section 388 motion." (*Ibid.*)

As we have said, the court stated it separately considered the severing of S.V.'s ties with his foster parents. The court also mentioned S.V. had been in their care since a few days after his birth for a total of two years at the time. The court also heard testimony and considered evidence throughout the hearing about mother's and foster parents' relationships with S.V. It received the visitation logs into evidence and read them. Thus it appears the court considered the strength of S.V.'s bond with his foster parents and the length of time he has been with them in

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<sup>16</sup> The court also could have concluded mother's expression of anger toward S.V.'s caregivers did not rebut the presumption that S.V.'s continued care by his foster parents was in his best interests even if that meant losing ties to his biological mother.

comparison to his bond with mother as an additional factor in its best interests analysis.

The record contains evidence that mother loved and cared for S.V. and engaged in parenting-type activities with him during their visits. Mother visited her son throughout his dependency, although she missed many visits during the reunification period when she was “deep in [her] addiction” and when she was in inpatient treatment. Since November 2017, mother consistently has visited S.V. and her visits have been appropriate and positive. Mother testified to her bond with S.V., and the M.’s are supportive of S.V. living with mother. Mother’s therapist testified about the improvement in mother’s parenting of S.V. and her ability to adjust to S.V.’s needs. He saw no mental barrier to mother being able to parent S.V. Social worker Huang also testified mother interacted with S.V. in a positive way. No one has expressed concerns for S.V.’s safety in mother’s care.<sup>17</sup>

The record also shows mother’s affection for and positive interaction with S.V. during visits. S.V. appears happy with mother in photographs. The logs report S.V. as happy, smiling, and babbling with mother. He responds to mother and has looked to her during their visits in more natural settings. He has sought comfort from mother and has not wanted to leave her at times. A video shows S.V. lying against mother’s shoulder. According to mother, he started calling her “mom.”

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<sup>17</sup> S.V.’s counsel and mother contend there was no evidence mother posed a safety risk to S.V.—that is true. Mother’s ability safely to care for S.V., however, weighs more toward her changed circumstances—she could not safely care for him before.

Although mother may feel bonded with him, the record does not compel a finding that S.V. has formed the same attachment to mother. Jane testified S.V. did not ask for mother after his visits with her and had no trouble transitioning back to his routine at home. She described his relationship with mother as one with another family member or therapist; he likes to go play. For the most part, S.V. separates easily when he returns to his foster parents. The evidence does not show he expresses a preference to be with mother.

The evidence demonstrates S.V. has a parent-child relationship with Jane and Alex. He seeks comfort from them both. He calls Alex “Daddy” and sometimes calls Jane “Mama.” They have acted as his parents from the time he was days old. Jane is there for all of his therapy visits. S.V. has looked to them for all of his needs all of his life, and they have fulfilled those needs.

In contrast, S.V., who was 26 months old at the time of the court’s ruling, has never lived with mother. He has never had an overnight visit with mother or an unmonitored visit in her home. He has spent quality time with mother, but only once or twice a week for 90 minutes to three hours at a time.<sup>18</sup>

Considering the court’s concerns, S.V.’s relative bonds with his foster parents and with his mother over this two-year-plus dependency, and that mother has never parented S.V. for more than a few hours at a time, the court did not act arbitrarily when it found it would not be in S.V.’s best interests to reunify with mother. The evidence supports the court’s implied conclusion that removing S.V. from his current placement would be

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<sup>18</sup> In the very beginning of the dependency, mother may have had one-hour visits, three times a week.



detrimental to S.V. Although mother may not pose a safety risk to her son and may love him unconditionally—a trait the court found a child needs to become a well-adjusted adult—those qualities fall short of demonstrating how reunification with mother “will advance [S.V.’s] need for permanency and stability.” (*In re J.C.*, *supra*, 226 Cal.App.4th at p. 527.)

**2. Termination of mother’s parental rights under section 366.26**

**a. The beneficial parent-child relationship exception**

Once the juvenile court terminates reunification services and determines a dependent child is adoptable, the burden shifts to the parent to demonstrate an exception to termination of parental rights under section 366.26, subdivision (c)(1). (See *In re Logan B.* (2016) 3 Cal.App.5th 1000, 1009-1010.) Under the beneficial parent-child relationship exception, the juvenile court may not terminate parental rights if it finds “termination would be detrimental to the child” because “parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).)

The “benefit” prong to this exception has been interpreted to mean the parent’s relationship with the child “promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 (*Autumn H.*)). “Interaction between natural parent and child will always confer some incidental benefit to the child.” (*Ibid.*) But “[n]o matter how loving and frequent the contact, and notwithstanding the existence of an ‘emotional bond’ with the child, ‘the parents must show that they occupy “a parental role”

in the child's life.' [Citations.] The relationship that gives rise to this exception to the statutory preference for adoption 'characteristically aris[es] from day-to-day interaction, companionship and shared experiences. Day-to-day contact is not necessarily required, although it is typical in a parent-child relationship.' ” (*In re K.P.* (2012) 203 Cal.App.4th 614, 621.)

“[T]he court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*Autumn H., supra*, 27 Cal.App.4th at p. 575.) In other words, “to establish the exception a parent must prove that the benefit of continuing a parental relationship outweighs the child’s interest in the stability and permanence of adoption.” (*In re Logan B., supra*, 3 Cal.App.5th at p. 1012 [interpreting parent-child benefit relationship exception requires parent to prove a “compelling reason” why termination of parental rights would be detrimental to the child].)

We review the juvenile court’s determination whether a beneficial parent-child relationship exists for substantial evidence and whether a compelling reason exists for finding termination of that relationship would be detrimental to the child for abuse of discretion. (*In re K.P., supra*, 203 Cal.App.4th at p. 622; *In re E.T.* (2018) 31 Cal.App.5th 68, 76.)

- b. *Mother failed to prove the benefit of continuing her relationship with S.V. outweighed the benefits of adoption*

The juvenile court found mother did not demonstrate either prong of the beneficial parent-child relationship. We assume, without deciding, that mother regularly visited S.V. and focus on the benefit prong. We do not repeat our analysis of S.V.'s best interests above, which also applies to our analysis here.

As we discussed, there is evidence that S.V. and mother engaged in parent-child type interactions during their visits and had some type of a bond. Mother treated S.V. as her child and S.V. was happy to be with mother and sometimes did not want to leave. The photographs and videos show a happy child. But this evidence does not compel a finding that the bond between mother and S.V. *outweighs* S.V.'s interest in the stability and permanence of adoption by the only true parents he has ever known.

As we have said, S.V. has never lived with mother or even had an overnight visit with her. (See *In re E.T.*, *supra*, 31 Cal.App.5th at pp. 76-77 [four-year old twins, who had “spent almost half their lives” with mother, would benefit from continuing their relationship with her]; *In re Amber M.* (2002) 103 Cal.App.4th 681, 689 [mother had beneficial relationship where youngest child had been in mother's care for first seven months of her life and older siblings for most, and more than half, of their lives].) Although he has received some benefit from his visits with mother, the evidence demonstrates S.V. does not have the type of “substantial, positive emotional attachment” that can overcome the preference for adoption. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

Substantial evidence supports the court's finding that the beneficial parent-child exception does not apply.

**DISPOSITION**

The orders of the juvenile court are affirmed.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

EGERTON, J.

We concur:

LAVIN, Acting P. J.

DHANIDINA, J.